

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Tony Fountain #152157

Plaintiff,

VS.

Civil Action NO. 2:06-CV-548-
-M.H.T.

DR. PEASANT, et al,
Defendants.

REQUEST FOR A STATUS UPDATE
ON PLAINTIFF'S MOTION TO VOID
ORDER OF AUGUST 2, 2006 / OR CLARIFY
ENFORCEMENT OF THE ORDER OF AUGUST 2,
2006, AND FOR REIMBURSEMENT OF PLAINTIFF
FILING FEE'S OF AUGUST 9th 2006

Comes now, Tony Fountain, by and through himself hereby moves, this Court for a status update on, his "MOTION TO VOID ORDER OF AUGUST 2nd 2006 / OR CLARIFY ENFORCEMENT OF THE ORDER OF AUGUST 2nd 2006 AND FOR REIMBURSEMENT OF PLAINTIFF'S FILING Fee's OF AUGUST 9th 2006," that was Filed in this Court on or about April 26 2007. Plaintiff submits the following Facts in support of (t)his motion to wit:

- 2). plaintiff's Filed the afore said motion in the above styled Case on April 26 2007.

And which the afore said motion has been pending over 30 days without Resolution.

2). The laws set by Congress, are well settled, pursuant to 28 U.S.C. § 636, on the point "that a Magistrate Judge (Susan Russ Walker) may not enter a final judgment on a motion to proceed in forma pauperis, unless the matter had been referred to her by the courts and the parties have expressly consented to have a Magistrate decide the motion and enter judgment". See 28 U.S.C. § 636 (c); Ambrose v. Welch, 729 F.2d. 1084 (6th Cir. 1984); Alaniz v. California Processors, Inc., 690 F.2d. 717 at 720 (9th Cir. 1982); also see Geaney v. Carlson, 776 F.2d. 140 at 142 (7th Cir. 1985). Plaintiff further contends the Magistrate Judge (Susan Russ Walker's) order of August 2nd 2006, granting plaintiff's motion to proceed in forma pauperis status and ordering plaintiff to pay a sum of \$350.00, before August 10 2006 was not authorize nor enforceable. Tripati v. Rison, 847 F.2d. 548 (CA9, 1988), 28 U.S.C. § 636 b 636 (c), Prows v. Kastner 842 F.2d. 138 (5th Cir. 1988). A Magistrate Judge (Susan Russ Walker) has no authority to issue a dispositive order "granting or denying in forma pauperis status pursuant to 28 U.S.C. § 636 (b) (2) b 636 (c).

3). Plaintiff's further contends, the Records before this Court is ~~not~~ devoid of any such consent by him that would have allowed the Magistrate Judge (Susan Russ Walker) authorization to Grant or deny his Motion to proceed In Forma Pauperis Status. (This Court can take judicial notice of it's own Records, see (Court Doc. #17-1, pages 1-3). Also 28 U.S.C. § 636(c))

Which was necessary in order to have given the Magistrate Judge (Susan Russ Walker) the authority to Grant or Deny plaintiff's Motion to proceed In Forma Pauperis Status.

Wherefore, Plaintiff prays that this Motion for a Status update be "Granted" as the law and justice Requires.

Done this 30th day of May 2007


Tony Fontana, PRO SE

CERTIFICATE'S OF SERVICES

I, Certify, that I have served a true and correct Copy of the foregoing upon the following as Addressed:

OFFICE OF THE ATTORNEY General
11th S. Union St. Montg. AL 36130,

And

The law office of Portefield, Harper,
Mills & Motlow PC. 22 Inverness
Center Parkway suite 600, P.O. Box
530790, Birmingham, AL 35253-0790

by placing the same in the U.S. Mail on this
30th day of May 2007.

Sincerely

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Tony Fountain #152157
 State Correctional Facility
 P.O. Box 56, B1-93A
 Elmore, AL 36025

36101+0711

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OFFICE OF THE CLERK
 United States District Court
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 Montgomery, AL 36101-0711

